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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/462,218	05/22/2000	CHARLES POTTER	OPF10.02	4802

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EXAMINER

SIRMONS, KEVIN C

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 02/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/462,218	POTTER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kevin C. Sirmons	3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 December 2002.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-5, 8, 13, 14, 19, 21 and 22 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-5, 8, 13, 14, 19 and 21 is/are rejected.

7) Claim(s) 22 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 8, 13, 14, 19, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Drudik U.S. Pat. No. 5,125,892.

Drudik discloses a capsule adapted for containing a dose of a therapeutic agent to be delivered within a pressurized fluid flow, said capsule comprising a first member and a second member (14), wherein said first and second members are coupled together to provide a closed pocket (figs. 1 and 8-12) and one of said first and second members is moveable relative to the other member when a portion of said capsule is contacted with a pressurized fluid flow (figs. 1 and 8-12), said first and second members being constructed and arranged such that upon said relative movement a passage is formed through said capsule and said pocket is opened to expose the dose (figs. 1 and 8-12); as to claims 2-5, 8, 13, 14 and 21(figs. 1 and 8-12); as to claim 19, (col. 8).

***Response to Amendment***

***Drawings***

The drawings were objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "33" and "34" had both been used to designate replaceable capsule. Applicant has amended the drawings. Therefore, the objection has been withdrawn.

***Claim Rejections - 35 USC § 112***

Claims 3 and 4 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has clarified the 112 rejections by explanation. Therefore, the rejection has been withdrawn.

***Response to Arguments***

Applicant's arguments filed 12/2/02 have been fully considered but they are not persuasive.

In response to applicant's argument that Drudik fails to anticipate applicants' recited devices since it does not disclose each and every element thereof. In particular applicants' claim 1, which recites a capsule "comprising a first member and a second member, wherein said first and second member are coupled together to provide a closed pocket for containing the dose". It is the examiner's position that Drudik clearly discloses a first and a second member coupled together to provide a closed pocket for containing the dose (see figs. 1, 2, 3, and 8-12). In figure 1, a dose is clearly shown being contained by first and second members just below 14/36.

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The dose could not be contained if 14/36 were not there to block the flow of the fluid. The above arguments also apply to claim 14.

***Allowable Subject Matter***

Claim 22 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Kevin C. Sirmons whose telephone number is (703) 306-5410. The examiner can normally be reached on Monday - Thursday from 6:30 am to 4:00 pm. The examiner can also be reached on alternate Fridays.

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Patent Examiner  
5/22/02

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